

Gary L. Cooper - Idaho State Bar #1814
James D. Ruchti - Idaho State Bar #6366
COOPER & LARSEN, CHARTERED
151 North Third Avenue, Suite 210
P.O. Box 4229
Pocatello, ID 83205-4229
Telephone: (208) 235-1145
Facsimile: (208) 235-1182

Counsel for Defendant Aircraft Cylinders of America, Inc.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

BROOK NEF and NEF FLYING)
SERVICE, INC., an Idaho corporation,)
)
Plaintiffs,)
)
vs.)
)
ENGINE COMPONENTS, INC., a)
foreign corporation; TULSA AIRCRAFT)
ENGINES, INC., a foreign corporation;)
AIRCRAFT CYLINDERS OF AMERICA,)
INC., a foreign corporation,)
)
Defendants.)
_____)

CASE NO. CIV-04-362-E-BLW

**REPLY MEMORANDUM IN SUPPORT
OF DEFENDANT ACA'S MOTION TO
DISMISS FOR LACK OF PERSONAL
JURISDICTION**

TULSA AIRCRAFT ENGINES, INC.,)
a foreign corporation,)

Counterclaimant,)

vs.)

BROOK NEF and NEF FLYING)
SERVICE, INC., an Idaho corporation,)

Counterdefendants.)

TULSA AIRCRAFT ENGINES, INC.,)
a foreign corporation,)

Cross-Plaintiff,)

vs.)

ENGINE COMPONENTS, INC.,)
a foreign corporation,)

Cross-Defendant.)

COMES NOW DEFENDANT, Aircraft Cylinders of America, Inc. (hereinafter "ACA"), by and through counsel of record, and submits the following Reply Memorandum in Support of Defendant ACA's Motion to Dismiss for Lack of Personal Jurisdiction. In their Brief Opposing Motion to Dismiss, Plaintiffs (hereinafter "Nef") argue the following: (1) ACA's actions fall within Idaho's long-arm statute; (2) the Court has jurisdiction over ACA under a due process analysis because ACA has purposely availed itself by placing its product into the "stream of commerce"; and (3) it would be unfair to require Nef to prosecute this case outside the State of Idaho.

I. ACA's Actions Fall within Idaho's Long-Arm Statute.

In Nef's opposition brief, he argues that ACA's alleged actions fall within Idaho's long-arm

statute; however, he fails to fully explain the basis for his conclusion. In fact, he entirely ignores ACA's analysis and argument provided in ACA's memorandum in support. The question Nef must address is how the causes of action being alleged in this case **arise** from the commission of a tortious act **within** the State of Idaho by ACA. As ACA has argued, it has never transacted business within the State of Idaho and is not registered to do business here. It has not conducted business activity within the State of Idaho and, therefore, the alleged causes of action against ACA do not fall within the long-arm statute.

In addition, Nef does not address ACA's argument that even if the Court does find the long-arm statute is satisfied based on tortious conduct, the Court should limit jurisdiction to only the causes of action sounding in tort. ACA's argument is consistent with the Idaho Supreme Court's holding in *Doggett v. Electronics Corp. of America*, 93 Idaho 26, 454 P.2d 63 (1969).

II. ACA Has Not Placed a Product in the "Stream of Commerce."

Nef's opposition memorandum also argues that Idaho Courts have personal jurisdiction over ACA under a specific jurisdiction analysis because ACA has purposely availed itself of the protections of Idaho law by placing a product into the "stream of commerce." Nef insists that ACA's chroming process is part of the manufacturing process; however, he cites no statutory or case law to support his argument. Nef does, however, make an argument as to why Engine Components, Inc. should be considered a manufacturer, but that point is not contested by ACA. Just because Engine Components, Inc. is considered a manufacturer does not mean ACA is a manufacturer.

Nef altogether ignores Idaho Code § 6-1402(2), which defines "manufacturer." In that definition, a manufacturer "includes a product seller who designs, produces, makes, fabricates,

constructs, or remanufactures the relevant product or component part of a product before its sale to a user or consumer." ACA did not design, produce, make, fabricate, construct or remanufacture the cylinder.

Nef also failed to address ACA's argument that it did not place a product into the "stream of commerce" because the chroming process is not considered a "product" under Idaho law. Idaho Code § 6-1402(3) defines "product" as a "object possessing intrinsic value, capable of delivery either as an assembled whole or as a component part or parts, and produced for introduction into trade or commerce." The chroming process is not an object possessing intrinsic value, and it is not capable of delivery in and of itself.

Finally, Nef did not address ACA's argument that ACA has not taken – as required by the Ninth Circuit's application of *Asahi's*¹ "stream of commerce" analysis – any affirmative action to avail itself of the protection of Idaho law. It is clear from the record before the Court that ACA's lack of contacts with and lack of presence in Idaho demonstrates it has taken no affirmative action which would justify the Court exercising personal jurisdiction over ACA.

Nef has failed to carry its burden to show ACA is subject to personal jurisdiction in Idaho under a due process analysis.

III. It Would Be Unfair to Require ACA to Defend Itself in Idaho.

The extension of this Court's jurisdiction over ACA would unfairly require ACA to defend itself in Idaho. The focus in personal jurisdiction analysis should be on the activity of the defendant

¹*Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 107 S.Ct. 1026 (1987).

and not on the reach of the jurisdictional statute. The well-known standard is whether the defendant has "minimum contacts" with the forum state such that "the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 158 (1945).

It is an unnecessary burden on ACA to require it to participate in a lawsuit in which there are other defendants who were directly engaged in the manufacturing process and in injecting their products into the "stream of commerce," and who are amenable to the jurisdiction of the Court. Nef has simply cast a broad net to try to capture any entity who had any involvement with the cylinders, regardless of whether their alleged activities subject them to jurisdiction in Idaho.

CONCLUSION

Based on the arguments provided above, the Court should grant ACA's motion to dismiss.

DATED this 8th day of October, 2004.

COOPER & LARSEN



JAMES D. RUCHTI

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 2004, I served a true and correct copy of the foregoing to:

Howard D. Burnett
HAWLEY TROXELL ENNIS & HAWLEY
P.O. Box 100
Pocatello, ID 83204

☒ U.S. mail
☐ Express mail
☐ Hand delivery
☐ Fax:

Alan C. Stephens
THOMSEN STEPHENS LAW OFFICES
2635 Channing Way
Idaho Falls, ID 83404

☒ U.S. mail
☐ Express mail
☐ Hand delivery
☐ Fax:

Mark S. Geston
L. Jeff Severson
STOEL RIVES
101 S. Capitol Blvd., Suite 1900
Boise, ID 83702

☒ U.S. mail
☐ Express mail
☐ Hand delivery
☐ Fax:

Thad T. Dameris
PILLSBURY WINTHROP
909 Fannin, 22nd Floor
Houston, TX 77010

☒ U.S. mail
☐ Express mail
☐ Hand delivery
☐ Fax:



JAMES D. RUCHTI